examine the work to be done before submitting their bid. Award will be made to the lowest responsible bidder for the entire work. The dredge may be seen in the water on Monday, October 17th, 1921, and in the dock on Tuesday, Oct. 18, 1921. Any material which is removed from the dredge and replaced by new material will remain the property of the United States; and all material which is to be used must be furnished by the contractor, unless otherwise specified herein. Any material which is to replace the old material which is to be removed must be of the same make and grade or fully acceptable to the inspector. Any part of the dredge or machinery which it is necessary to disturb during repairs must be put back in like condition when the work is completed. No extra work will be allowed unless specifically authorized in writing by the inspector. If there is any work which might develop while the boat is under repairs a supplemental bid for such work must be submitted for approval.

The bid of the Johnson Iron Works Dry Dock & Shipbuilding Co. (Inc.), named a price of $734 for the item of repairing the lot of gates and the total of approximately $14,000 for all of the 37 items, which, being the lowest, was accepted. Prior to the opening of the bids a memorandum of the estimated work on the vessel, including work on the gates and gate seats, was given to the contractors showing 43 linear feet of electrical welding to be done on the seats. In carrying out the repairs 86¾ linear feet of welding was actually done, and the contractor claims an additional sum of $856.34 for the 43¾ feet of welding in excess of the number of feet stated in the memorandum.

The agreement was to make specified repairs, etc., to the *Benyaurd* for a certain total sum. As one of the 37 items, it agreed to repair all of the fastenings on the dumping gates and make the gates as nearly tight as possible. Prospective bidders were enjoined to thoroughly examine the work to be done before submitting their bid, and there was nothing in the accepted bid which limited the welding to be done to 43 or any other number of feet. The memorandum estimating the welding at 43 linear feet was not specifically referred to, or otherwise incorporated, in the agreement and is not necessarily a part thereof.

It is a general rule of law that where a contractor obligates himself to do certain work according to an estimate for a lump sum he is required to perform the same. The exception to the general rule is that where the work done is so grossly disproportionate to the estimate that it makes the contract so inequitable and unfair that it is unconscionable, the contractor is entitled to recover on a *quantum meruit* basis.

It is apparent that if all of the work done was 100 per cent more than the estimate the exception to the general rule would apply, but the exception to the general rule does not apply where the work in one particular item is 100 per cent more than what was estimated. Agreements must be considered as a whole. It may be that for the other 36 items the work was not as much as was estimated. If the rule of *quantum meruit* is applied, it must be applied to the whole

contract and not to one particular item in the contract. It is apparent that in this case the contractor relied upon the total price for 36 items, and is satisfied with the same, but seeks to set aside as to one item only and apply the rule of *quantum meruit*. This he can not do. The contractor is bound by the agreement and is entitled to receive the total price and no more.

Payment of the voucher is unauthorized.

ADVANCE PAYMENT FOR SUBSCRIPTIONS TO PERIODICALS.

Subscriptions to periodicals for periods not exceeding one year, when necessarily ordered at a time during a fiscal year that will necessitate some deliveries in the succeeding fiscal year, may be charged under the appropriation current when the order was placed, but payments in advance for subscriptions in excess of one year are not authorized.

The restriction in the act of March 15, 1898, 30 Stat., 316, against the purchase of law books, books of reference, and periodicals for executive departments or Government establishments at the seat of Government unless specifically appropriated for is not applicable to purchases for field use.

Decision by Comptroller General McCarl, January 24, 1923.

The Chief, Interior Department Division, this office, submitted January 13, 1922, the matter of payment in advance for periodicals, act of March 4, 1915, 38 Stat., 1049, holding, in substance, that the claim of the McGraw Hill Co. (Inc.), amount $8, for two years' subscription to Engineering News-Record, August 1, 1922, to July 31, 1924, is only chargeable under the appropriation sought to be charged, "Geological Survey, 1923 (gauging streams, etc.)," to the extent and in the amount of one year's subscription and that payment for more than one year's subscription is not authorized.

The facts appear that the periodical ordered was for field use, and was not, therefore, for use of any executive department, etc., at the seat of government, act of March 15, 1898, 30 Stat., 316; that the order was placed for a two-year subscription, payable in advance, because of a saving of 20 per cent in the cost by reason thereof; and that, but for such saving, the order could have and would have been placed for a one-year subscription, or for a subscription for a lesser period of time.

The appropriation sought to be charged, 42 Stat., 586–587, reads:

For every expenditure requisite for and incident to the authorized work of the Geological Survey * * * under the following heads:

* * * * * * *

For gauging streams and determining the water supply of the United States, the investigation of underground currents and artesian wells, and the preparation of reports upon the best methods of utilizing the water resources, $180,000, of which $25,000 may be used to test the existence of artesian and other underground water supplies suitable for irrigation in the arid and semiarid regions by boring wells; * * *.

The provision in the act of March 4, 1915, 38 Stat., 1049, as to payment for subscriptions in advance, reads:

SEC. 5. That hereafter subscriptions to periodicals, which have been certified in writing by the respective heads of the executive departments or other

Government establishments to be required for official use, may be paid in advance from appropriations available therefor.

In construing section 5 of the act of March 4, 1915, 22 Comp. Dec., 586, it was said that "Said provision was enacted to overcome the prohibition contained in section 3648 of the Revised Statutes * * * and was not intended to authorize payments from appropriations not available therefor."

The appropriation sought to be charged appears otherwise available for subscriptions to periodicals, but not generally for services extending beyond the period for which the appropriation was provided, namely, the fiscal year ending June 30, 1923.

Where a subscription is for a period not exceeding a year, if the order is necessarily placed at a time during a fiscal year which will necessitate some deliveries in the succeeding fiscal year, and if the appropriation for such succeeding fiscal year was not available for obligation, etc., at the time such order was necessarily placed, the whole year's subscription may be charged under the appropriation thus current and available.

The conclusion of the auditing division is approved.

TRAVEL ALLOWANCE ON AND AFTER SEPTEMBER 22, 1922—ENLISTED MEN OF THE ARMY.

Enlisted men of the Army discharged on or after September 22, 1922, are entitled under the act of that date, 42 Stat., 1021, to travel allowance only to the place of enlistment, enrollment, or muster into the service for the expiring enlistment, and not to the place of original entry into the service in a prior enlistment, and if the place of discharge and place of enlistment are one and the same no travel allowance is payable.

Decision by Comptroller General McCarl, January 24, 1923.

Settlement No. W–155504, this office, dated November 23, 1922, allowed George F. Austin, first sergeant, Service Company, Twenty-third Infantry, United States Army, $105 travel allowance on discharge October 10, 1922, which represented 5 cents per mile for 2,100 miles from Camp Travis, Tex., place of discharge, to Worcester, Mass., bona fide home, under the act of February 28, 1919, 40 Stat., 1203.

The record shows that claimant originally enlisted in the Army March 22, 1899; that he served continuously through several enlistment periods until October 10, 1919, when discharged at Camp Travis, Tex., and reenlisted next day at same place for three years, from which enlistment he was discharged at Camp Travis, October 10, 1922, by reason of which he claimed travel allowance to his home.

The act of February 28, 1919, *supra.*, which gave an option to enlisted men honorably discharged from the Army to receive travel allowance from place of discharge either to their actual bona fide

home or residence, or original muster into the service, at the rate of 5 cents per mile, was amended by the act of September 22, 1922, 42 Stat., 1021, providing, in part, as follows:

Hereafter an enlisted man discharged from the Army, Navy, or Marine Corps, except by way of punishment for an offense, shall receive 5 cents per mile for the distance from the place of his discharge to the place of his acceptance for enlistment, enrollment, or muster into the service: * * *.

This act, applicable to all discharges of the character mentioned therein, occurring on and after September 22, 1922, took away the election or option to receive travel pay to one of two places granted by the previous law, and limited computation of the allowance to place of acceptance for enlistment, enrollment, or muster into the service.

The "place of acceptance of enlistment, enrollment, or muster into the service," relates to the current enlistment or enrollment period, the discharge from which is the basis for the claim for travel allowance, and not a man's original entrance into the service. 5 Comp. Dec., 488; 7 *id.*, 606; *id.*, 648.

Accordingly, in the present case claimant had no right to travel allowance by reason of his discharge of October 10, 1922, because the place of acceptance for enlistment, Camp Travis, Tex., was also the place of discharge.

Upon review of the matter the settlement is reversed and the sum of $105 certified due the United States.

RETAINER PAY—NAVAL RESERVE FORCE—CHANGE OF ADDRESS.

The fact that checks for retainer pay mailed to a member of the Naval Reserve Force at the various addresses furnished by him were returned by the postal authorities as being incorrectly addressed raises the presumption that he has not made such reports concerning his movements and occupations as required by the act of August 29, 1916, 39 Stat., 588, as a condition precedent to the payment to him of retainer pay.

Decision by Comptroller General McCarl, January 25, 1923.

Obe Franklin Hall, former seaman, second class, United States Naval Reserve Force, applied November 28, 1922, for review of settlement N–274401, dated November 11, 1922, by which was disallowed his claim for retainer pay for the period June 29, 1918, date of enrollment, to September 30, 1921, date of discharge.

The records show that claimant was enrolled in the Naval Reserve Force June 29, 1918, as seaman, second class, was confirmed in rating November 24, 1918, reported for active duty July 26, 1918, ordered to inactive duty January 29, 1919, and discharged September 30, 1921.

The Navy allotment office advised claimant by letter dated October 20, 1922, in part as follows:

1. Checks covering payment of your retainer pay from 29 June, 1918, date of enrollment, to 30 June, 1921, at the rate of $12.00 per annum, the amount